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09/886,829	06/21/2001	John Joseph Curro	8595	8075

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THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
WINTON HILL TECHNICAL CENTER - BOX 161  
6110 CENTER HILL AVENUE  
CINCINNATI, OH 45224

EXAMINER

BEFUMO, JENNA LEIGH

ART UNIT	PAPER NUMBER
1771	

DATE MAILED: 12/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/886,829

Applicant(s)

CURRO ET AL.

Examiner

Jenna-Leigh Befumo

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/03
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "104" has been used to designate both the supply roll for the first web and the supply roll for the second web, in Figure 9. It is noted that according to the specification, the supply roll for the second should be number 105.
2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign mentioned in the description: 105.
3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "130" has been used to designate both the elastic layer before it is bonded to the outer layers, in Figure 9, and the nip formed between rolls 134 and 136, in Figure 9.
4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference signs not mentioned in the description: 64, 66, 68, 70, and 72 in Figures 7 and 8, and 102, in Figure 10.
5. The drawings are objected to because Figure 8, after being scanned, is mostly black and it is impossible to tell what the picture is suppose to be, or where the reference numbers are pointing. It is suggested that he applicant provide a picture with greater contrast between the different regions of the figure.
6. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled

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"Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Double Patenting***

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 6 – 10 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 19 – 22, 28, and 29 of copending Application No. 09/467,938. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims recite the same overall structural limitations, i.e., a nonwoven, apertured laminate comprising a first layer and a second layer which are bonded together at a plurality of bond sites, and a third layer disposed between the first and second webs, wherein the first and second webs are joined or bonded to each other at the apertures. Both sets of claims further define the first and second layers as nonwoven layers and also claim that the bond sites have the same aspect ratios.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented. However, it is noted that the claims in 09/467,938 have been indicated as allowable, but the patent has not been issued yet.

9. Claims 1 – 10 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 21 and 23 – 31 of copending Application No. 09/584,676. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims recite to the same overall structural limitations, i.e., a nonwoven, laminate comprising a first web and a second web which are bonded together at a plurality of bond sites, and a third layer disposed between the first and second webs, wherein the first and second nonwoven web are joined together at the bond sites and the structure is either apertured or not apertured at the bond sites.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

10. Claims 6 – 10 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6, 7, and 9 – 12 of copending Application No. 09/886,730. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims recite the same overall structural limitations, i.e., a nonwoven, apertured laminate comprising a first web and a second web which are bonded together at a plurality of bond sites, and a third layer disposed between the first and second webs, wherein the first and second webs are joined or bonded to each other at the apertures. The claims further define the first and second layers as being nonwoven materials and

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the third layer as being an elastic material. Finally, both sets of claims recite that the bond sites have the same aspect ratio range.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented. However, it is noted that the claims in 09/886,730 have been indicated as allowable, but the patent has not been issued yet.

11. Claims 1 and 3 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 09/886,828. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims recite to the same overall structural limitations, i.e., a nonwoven, laminate comprising a first web and a second web which are bonded together at a plurality of bond sites, and a third layer disposed between the first and second webs, wherein the first and second nonwoven web are joined together at the bond sites and the structure is not apertured at the bond sites.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented. However, it is noted that the claim in 09/886,828 has been indicated as allowable, but the patent has not been issued yet.

12. Claims 1 – 10 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 – 5, 19 – 23, 28, and 29 of copending Application No. 10/149,879. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims recite the same overall structural limitations, i.e., a nonwoven, apertured laminate comprising a first web and a second web which are bonded together at a plurality of bond sites, and a third layer disposed between

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the first and second webs, wherein the first and second webs are joined or bonded to each other at the apertures. The claims further define the first and second layers as being nonwoven materials and the third layer as being an elastic material. Finally, both sets of claims recite that the bond sites have the same aspect ratio range.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102***

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

14. Claims 6, 7, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Srinivasan (5,567,501).

Srinivasan et al. discloses a thermally apertured nonwoven laminate comprising nonwoven outer layers bonded to a middle layer (abstract). The laminate comprises two outer nonwoven layers and a middle film layer (column 1, lines 60 – 65). The apertures are formed under heat and pressure by melting the middle layer so it bonds to the outer layers as well as shrinks away from the heat producing a whole (column 2, lines 52 – 62). The fibers of each outer layer and the middle layer become fused together and form a fused border at each aperture (column 3, lines 15 – 22). Thus, the fibers of the outer layers will inherently be in contact at the edges of the apertures, which correspond to the applicant's bond sites. Also, since the apertures are formed using heat, the bonds between the outer layers are thermal bonds and absent adhesive.

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The middle layer can include various types of plastic films (column 4, lines 9 – 12), apertured plastic films (column 4, lines 43 – 45), or a nonwoven web comprising bi-component fibers (column 4, lines 52 – 60). Specifically, Srinivasan et al. teaches adding elastic properties to the laminate by using an elastomeric film as the middle layer (column 5, lines 4 – 10).

The recitation that the laminate is a mattress web is considered to intended use and adds no further structural limitation to the claimed laminate, since it has been held that a recitation with respect to the manner in which a claimed product is intended to be employed does not differentiate the claimed product from a prior art product satisfying the claimed structural limitation. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Therefore, claims 6, 7, and 10 are anticipated.

15. Claims 6, 7, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Palumbo (WO 96/10979).

Palumbo discloses a laminate with apertures comprising an upper layer, an intermediate, and a lower layer (page 3). The upper and lower layers are nonwoven webs (page 4). The intermediate layer is an elastic film comprising a thermoplastic elastomer (page 5). The laminate is produced by running the three layers through rollers with heated teeth which form the perforations in the laminate and thermally bond the layers together (page 7). Palumbo teaches that the outer layers are thermally bonded to each other at the edges of the perforations (page 7). Thus, the outer layers would be in communication with each other at the edges of the opening and bonded without adhesives. And, as set forth above, the recitation that the laminate is a mattress cover is considered to be intended use and does not add any further structural limitations to the claimed product. Therefore, claims 6, 7, and 10 are anticipated.



***Claim Rejections - 35 USC § 103***

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Srinivasan et al.

The features of Srinivasan et al. have been set forth above. Even though Srinivasan fails to teach that the bond sites have an aspect ratio of at least about 3, Srinivasan discloses that the bond pattern can have one of a number of different geometries (column 6, lines 54 – 56). And Srinivasan teaches that the laminate can be modified by changing the bond pattern and process conditions, or stretched to enhance the aperture clarity and size (column 3, lines 50 – 57). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to choose the claimed aspect ratio, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215. One of ordinary skill in the art would be motivated to choose the bond pattern geometries and bond size to optimize the strength, permeability, and texture of the laminate. For example, one of ordinary skill in the art would want to optimize the amount of air and liquid which can travel through the laminate, while maintaining the strength of the laminate, so that the laminate will be comfortable when worn against the skin in absorbent products.

Therefore, claims 8 and 9 are rejected.

18. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palumbo.

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The features of Palumbo have been set forth above. Palumbo discloses that the size and spacing of the perforation can be chosen according to the intended use (page 9). Further, Palumbo discloses the perforations can be the same as those described in EP-A-207904, which includes elliptical shape. However, Palumbo fails to teach that the aspect ratio of the bond sites is at least 3. Therefore, it would have been obvious to one of ordinary skill in the art choose the claimed aspect ratio, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art, as set forth above. One of ordinary skill in the art would be motivated to choose the size of the perforation based on the intended use of the laminate, by modifying the perforation to optimize the strength, permeability, and texture of the laminate. Thus, claims 8 and 9 are rejected.

***Allowable Subject Matter***

19. The following is a statement of reasons for the indication of allowable subject matter: The prior art fails to teach a three layer laminate wherein the outer layers are bonded together at discrete bond sites, the middle layer is an elastic layer with apertures located at the bond sites, and the outer layers are joined together through the apertures of the middle layer at the bond sites. While the prior art discloses three layer laminates having two outer layers and an elastic middle layer, the prior art doesn't teach that the middle layer is apertured and that the outer layers are bonded together through the aperture. Instead, the prior art discloses laminates where the outer layers are bonded to the middle layer and not to each other. Thus, claims 1 – 5 would be allowable once the double patenting rejections have been overcome.


***Conclusion***

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jenna-Leigh Befumo  
November 24, 2004